



May 2, 2019

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

Re: Notice of *Ex Parte* Communication, MB Docket No. 18-119

Dear Ms. Dortch:

On April 30, 2019, Rick Kaplan and the undersigned of the National Association of Broadcasters (NAB) met with Al Shuldiner and Jim Bradshaw of the Media Bureau to discuss the draft Report and Order in the above-captioned proceeding.<sup>1</sup> On May 1, 2019, we met with the following individuals to discuss the same proceeding: Matthew Berry, Chief of Staff, Chairman Ajit Pai, Nathan Leamer, Policy Advisor, Chairman Pai, and Al Shuldiner; Joel Miller, Chief of Staff and Media Legal Advisor, Commissioner Michael O'Rielly; Evan Swarztrauber, Policy Advisor, Commissioner Brendan Carr; Kate Black, Policy Advisor, Media, Commissioner Jessica Rosenworcel; and Michael Scurato, Acting Legal Advisor for Media and Consumer Protection, Commissioner Geoffrey Starks.

NAB commended the Commission on the Draft Order, which cogently resolves a variety of difficult issues affecting radio stations across the country. NAB expressed some concern, however, with the Commission's proposed new method for determining the minimum number of listener complaints needed to support an FM station's complaint of interference against a translator. Under the new approach, the required number of listener complaints would depend on the population within the desired FM station's service area, starting at six complaints for stations with a population of under 200,000 within their protected service and gradually increasing to at least 65 complaints commensurate with increases in the populations covered by FM stations.<sup>2</sup>

Although NAB appreciates the Commission's aim to tailor the required number of listener complaints to market size, we are concerned that FM stations will find it extremely challenging to collect the minimum number of listener complaints required in larger markets. As the Commission knows, very few listeners are motivated to register a complaint about radio interference,<sup>3</sup> instead choosing to simply change the channel to a clearer

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<sup>1</sup> *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, MB Docket No. 18-119 (draft issued Apr. 18, 2019) (Draft Order).

<sup>2</sup> *Id.* at ¶ 14.

<sup>3</sup> *Id.* at ¶ 31.

station. Even fewer are aware that a process exists for them to help correct such a problem, and those who are aware are loath to participate in a government proceeding. This resistance will only grow under the new requirements in the Draft Order that listener complaints be signed, dated and become part of the public record.<sup>4</sup> Yet another challenge is that translator interference may arise in a sparsely populated area within the coverage area of an FM station that also serves a large city, requiring a station to collect large numbers of complaints from a relatively small pool of affected listeners.

As a result, FM stations that are unable to gather enough listener complaints to meet the extremely high thresholds in the Draft Order will be thwarted from pursuing translator interference complaints, even if the interference is perfectly valid. Such an outcome would contradict the Commission's long-held priorities that primary radio services must be protected, and the public's radio reception preserved.<sup>5</sup> Notwithstanding certain rule and policy changes in the Draft Order designed to increase the certainty of translators, translators remain a secondary service that must defer to full-power FM services.<sup>6</sup>

For these reasons, NAB respectfully requests that the Commission return to its tentative conclusion in the Notice that complaints from six *bona fide* listeners is a reasonable basis for the Commission's consideration of an interference complaint, regardless of market size.<sup>7</sup> Should the Commission retain the population-based methodology, however, NAB recommends the Commission cap the minimum number of required complaints at 25, rather than 65. As discussed above, listener habits, privacy concerns and other obstacles will make it nearly impossible for some FM stations to gather enough complaints to meet the extremely high minimum requirements in more populous areas. Simply put, requiring 65 or 45 or even 30 listener complaints would be extremely onerous, even in large markets. Moreover, a higher threshold may also necessitate aggressive campaigns to solicit listener complaints. The Commission's table should therefore be amended to require that FM stations with a population of 2 million or more within their protected service contour must collect valid complaints from at least 25 listeners to support the filing of a translator complaint with the Commission.

Given the stricter standards in the Draft Order for validating and documenting listener complaints,<sup>8</sup> a maximum threshold of 25 complaints will still present a challenge to broadcasters. However, this approach would strike a reasonable balance between increasing the certainty of translators while protecting the service of full-power FM stations. Unlike the current process, translators will no longer be at risk because of a few complaints from listeners with highly sensitive equipment, but an FM station's pursuit of translator interference will not be hamstrung. This approach is also consistent with the Commission's

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<sup>4</sup> *Id.* at ¶ 17.

<sup>5</sup> *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, MB Docket No. 18-119 (May 10, 2018) (Notice), at ¶¶ 2-3.

<sup>6</sup> 47 CFR § 74.1203.

<sup>7</sup> *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, MB Docket No. 18-119 (May 10, 2018) (Notice), at ¶ 16.

<sup>8</sup> *Id.* at ¶¶ 16-18.

goal of providing clear guidelines that will help prevent prolonged or combative interference disputes.<sup>9</sup>

Most importantly, a maximum threshold of 25 complaints will benefit listeners by ensuring more reliable translator service and more consistent FM radio sound quality. NAB appreciates the opportunity to provide our views on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Larry Walke".

Larry Walke  
Associate General Counsel  
Legal and Regulatory Affairs  
National Association of Broadcasters  
(202) 429-5430

cc: Matthew Berry  
Nathan Leamer  
Joel Miller  
Evan Swarztrauber  
Kate Black  
Michael Scurato  
Al Shuldiner  
Jim Bradshaw

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<sup>9</sup> *Id.* at ¶ 4.